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In Pro per

**STATE OF CALIFORNIA
Energy Resources Conservation
And Development Commission**

In the Matter of:)	Docket No. 97-AFC-1
)	
The Application for Certification)	
For the High Desert Power Project)	
[HDPP])	Date: July 19 th 2006
)	California Energy Commission
)	Hearing Room A
)	1516 Ninth Street
)	Sacramento, California 95814
)	

REPLY BRIEF TO

Staff's Response to Public Comments Regarding

High Desert Power Project

Water Banking Schedule Amendment Petition

To the honorable Commissioners of the California Energy Commission,

I hereby submit this reply brief, which simply stated, there is no excuse that HDPP can present, where the conditions have changed not to enforce the conditions this commission imposed. The operative words in the Condition were developed from the evidence presented in the final decision, see page

216, and read, to ensure these results; several witnesses explained what the Conditions of Certification must require.¹

JUST THE FACTS

These modeling results establish that the project's water supply plan, if properly defined in Conditions of Certification, will not cause or contribute to the depletion of water resources in the area and will actually result in a slightly beneficial effect. (10/7/99 RT 238-239, 328-29; 10/8/99 RT 132-33, 145-46.) To ensure these results, several witnesses explained what the Conditions of Certification must require. (see Ex. 142.) Briefly, the key provisions are:

- the HDPP will use only imported SWP water for cooling uses; other water may not be substituted for this purpose (10/7/99 RT 272:7-13, 275:5-12, 291:16-19, 306:13 to 307:3);
- at all times, including prior to commencing operations and at the conclusion of operations, a balance of 1000 acre-feet (after accounting for dissipation) must be stored in the project's water "bank" (10/7/99 RT 199, 206, 209; 10/8/99 RT 116);
- if at any time the water balance in the bank is at 1000 acre-feet, the HDPP must shut down (10/7/99 RT 208; 10/8/99 RT 26, 122, 124);
- though the annual amount of SWP water imported for the project will vary, no later than the end of five years after the commencement of operations a total of 13,000 acre-feet of water must be injected into the groundwater system (10/7/99 RT 337; 10/8/99 RT 25, 113-14);
- dissipation of injected water is factored in and aquifer tests will be conducted annually, or if necessary quarterly, to monitor groundwater behavior; this monitoring will use the best data available (10/7/99 RT 261, 270; 10/8/99 RT 147-51; Ex.. 131, p. 2);

216

Staff Comments fail to directly address Intervenor's concerns about a CONDITION or Condition[s] of Certification. The testimony in the record is clear, "imported water for the project will vary, no later than the end of five years after commencement of operation a total of 13,000 acre-feet of water

¹

Final Commission Decision; adopted May 3rd 2000, page 216

must be injected . . .” If the commission chooses to ignore the evidence in the final decision, then it is clear to this Intervenor that the word “Conditions” as a licensing enforcement/regulatory tool for HDPP’s Water and Soil Conditions at the Energy Commission, is simply a farce. HDPP has argued and the commission has previously agreed, that Soil and Water conditions do not state specifically HOW, that decision is left to HDPP, however the operative words are “**. . . shall meet or exceed . . .**”²

- b. By the end of the fifth year of commercial operation, the amount of water injected minus the amount of banked groundwater used for project operation, minus the amount of dissipated groundwater shall meet or exceed thirteen thousand (13,000) acre-feet.

As you recall, California and the Energy Commission now operate in an unregulated power plant system. When this historic change was made, the public was promised that “if” Unregulated Power was approved that customers would save money. One of the public benefits “lost” to the public in the move from regulated to unregulated was that policy makers making decisions on “conditions to place on a regulated power project” would work to see that if capital costs were decreased, the economic benefit was passed on to the rate payer.

In this case HDPP testified and agreed that to meet the Commission’s mandate for a 13,000 acre foot water bank by the end of 5 years of operation they would need to use REVERSE OSMOSIS. If HDPP is allowed by the Commission to forgo the **CONDITION** as mandated (HDPP took the ultimate risk when they elected NOT to use R/O), then only HDPP and its investors are

² Final Commission Decision, adopted May 3rd 2000 page 233

rewarded. No economic benefit is passed on to the Public. HDPP charges the highest amount that the market will allow.

In 2002 I alerted the Commission that HDPP was violating the conditions. Reviewing the Hearing transcript of my complaint, which was summarily dismissed without prejudice as not being ripe, including the issues of water quality and setting standards, was discussed along with the R/O water treatment train. The position taken at the time was ³:

1. MR. LEDFORD: [Stipulation] "The project's water treatment facilities have not yet been completed".
2. MR. CARROLL: "We would . . . stipulate to numbered paragraph 9 which reads, as to condition 12, there is no CEC approved water treatment plan . . . as required by this condition".
3. MR. CARROLL: "We would . . . stipulate to paragraph 10 which reads, there has been no plan . . . that demonstrates the plan complies with the requirements identified in the report of waste discharge prepared by Bookman Edmonston in 1998 as required by condition 12."
4. PRESIDING MEMBER LAURIE: "What is your position in regards to the inconsistency relating to the verification?"
5. MR. KRAMER: "The rule interpretation we apply is that when the verification conflicts with the body of the condition, then the condition will prevail to the extent of conflict."
6. MR. LEDFORD: "**That means they're building a plant that doesn't comply with the condition. That's the complaint.** And the plans they submitted and that were approved by the Commission call for reverse osmosis, including the descriptive analysis in the letter."
7. MR. LEDFORD: "**It's a change from what was approved by the Commission based on the evidence in the record.**"

³ See Transcript of the January 14, 2002 Prehearing Conference of High Desert Power Plant Project. Date Uploaded: January 23, 2002 from CEC Website

8. MR. CARROLL: "The fact of the matter is that the decision and the conditions did not specify a particular water treatment methodology. **It specified a performance standard.**"
9. MR. CARROLL: "So, it is true that there is a document in the record, the application for certification, and the March 27th submittal, **that talks about reverse osmosis.**"
10. MR. KRAMER: "Yes. Staff does not believe that reverse osmosis was strictly required by the condition. The condition instead **set a performance standard**, and therefore **the issue is whether the current proposed treatment method meets the performance standard.**"

CEC Staff just seems to make up the rules as they go along, in January of 2002, all that HDPP was required to do was meet a performance standard, clearly three years later HDPP has failed to meet the "Performance Standard" with the Water Treatment Train they installed.

In a recent un-transcribed workshop on June 12th 2006, in Victorville California, this Intervenor asked HDPP representatives and Staff directly the following questions and got the following **replies**: Intervenor's questions are *in italics* [from CEC staff] and edited replies of staff or HDPP are in bold underline. When Intervenor replies to staff's comments, the comment is immediately after staffs' (bold underline). The exchange of information should be the basis for findings of FACT.

Comments from Mr. Gary A. Ledford (Intervenor in the HDPP AFC Workshop proceedings), Victorville, CA

1.

LEDFORD: *Didn't HDPP propose an RO treatment system at the time of certification? Why didn't the CEC require HDPP to install RO?*

CEC Staff Response

“Simply described, reverse osmosis is a water treatment method that removes dissolved salts and contaminants from water”.

“During the application process, HDPP proposed to use reverse osmosis to pre-treat raw SWP water for water bank injection”.

2.

LEDFORD: *If High Desert Power Project installed reverse osmosis (RO) immediately, wouldn't the project meet its water banking goal sooner than 13 years?*

CEC Staff/HDPP Response

“Yes. The use of a reverse osmosis pre-treatment system would eliminate the problem of high TDS concentrations, which has been a major factor preventing the scheduled water bank injection operations.”

Clearly the answer is to mandate the installation of R/O. The reality is that HDPP cannot even meet the “Performance Standard” that they suggested was all that the CEC Required.

3.

LEDFORD: *Even if HDPP installs RO immediately, isn't it correct that the project still couldn't meet the 5 year goal specified in S&W-4?*

CEC Staff/HDPP Response

“Yes, if HDPP began installation of reverse osmosis immediately, the project still couldn't meet the 5-year goal specified in S&W-4. Installation of reverse osmosis would enable the project to inject approximately 3,000 acre-feet/year, if the proposed ultraviolet system was also installed and there were no unscheduled interruptions in the delivery of SWP water. However, with less than 2 years left in the 5-year schedule, there is insufficient time to meet the 13,000 acre-foot goal.”

Staff's characterization of the 13,000 acre-feet of injected water as a “Goal” shows clearly the disregard for this being a “Condition” of certification. Instead of viewing the 13,000 acre-feet in 5-years as **a requirement**, staff characterizes it as a goal.

4.

LEDFORD: *Isn't it correct that HDPP wouldn't have had a TDS problem if they had installed the RO, as proposed? HDPP would have been able to meet the 5-*

year deadline?

CEC Staff/HDPP Response

“Yes, use of reverse osmosis pre-treatment should eliminate the problem of unacceptably high concentrations of TDS in the water banking injection water.”

Other water treatment may have also been required, but R/O would have guaranteed HDPP the ability to treat the water year round.

5.

LEDFORD: *How long would it take to install RO?*

CEC Staff/HDPP Response

“Staff assumes the reverse osmosis could be installed within one year, based on HDPP’s preliminary estimate”.

Actually HDPP stated they could probably get it online within six months

6.

LEDFORD: *Why isn’t the commission requiring HDPP to install RO immediately?*

CEC Staff/HDPP Response

“Staff is recommending the installation of reverse osmosis as a contingency plan to the proposed extension in case injection falls behind schedule”

The Condition requiring 13,000 acre-feet of injected water by the fifth year is already **behind schedule** and simply cannot be met according to CEC Staff, then the time to act is now.

CONCLUSION

1. HDPP’s Petition to amend the conditions of certification should be denied because there is nothing new in the mandate to bank water to:
 - a. Fail to “Meet HDPP’s specific performance standard”, or;
 - b. Fail to inject 13,000 Acre Feet of water by the end of the

fifth year of operation; and

c. HDPP knew or should have known that the water treatment system was not the system they originally testified to. R/O was simply required to meet the condition and then HDPP took the risk their less expensive system would work - it does not.

d. Water quality in SWP water has always been known to vary that is why R/O was the only guaranteed water treatment process to treat water year round, in an SWP project that has many variables.⁴

2. In the answers to Intervenor's questions Staff and HDPP admit that if HDPP had implemented the RO process that they intended to install the 13,000 Acre Feet of water would have been banked in 5 years and the Condition of Certification would have been met. Therefore there is no excuse for not meeting the conditions they agreed to.

4. Intervenor requests the Commission to make a determination that the RPMPD and final Order:

- DOES NOT allow for the degradation of ground water in the water banking operation of HDPP; and
- MANDATES that by the "end of the fifth year of operation that 13,000 acre feet of water **shall** be banked. The water in the SWP system was so bad that for an entire year HDPP could not bank any water at all.

⁴ Bookman Edmonston

Exhibit 14 Starting at 2-2
Exhibit 54 Starting at ES-1 – ES-3
Exhibit 65 starting at page 108 Section D-1

- While the Commission originally interpreted the Conditions of Certification so that HDPP could select the process to treat the water, the evidence in the record did not include the applicant selected Ultra Filtration water treatment train or the currently proposed UV System. Now three years later, their chosen money saving process does not work.
- The solution is NOT the Deferral of water quality protections provided by Condition 4. The solution is compliance.

6. The Commission is requested to find that the Compliance Officer shall issue a Shut Down Order in the event that the full 13,000 acre-feet or more of water is not banked by the end of fifth year of operation because HDPP did not comply with the conditions they agreed to and has not met the specific performance standards as required. This action by the Commission will restore the Public's trust that the commission will enforce its conditions of certification.

7. During evidentiary hearings, HDPP and the Energy Commission's experts all stated that failure to comply with water quality and water banking would lead to shutting down HDPP...from the record...

Mr. Ledford: "But again my point is . . . the Energy Commission going to shut this plant down?"

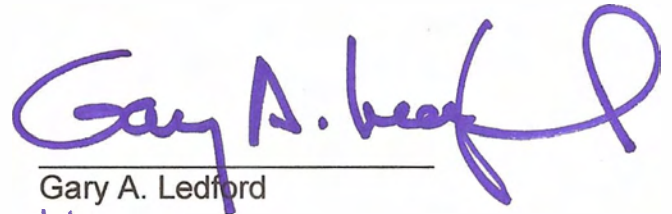
Ms Bond: "That's what the conditions of certification require, correct"

Mr. O'Hagen: ". . . As a staff of the Commission, if these conditions are, in fact, adopted by the Commission, I would hope that we would enforce that."

My prayer is that this Commission will enforce the conditions as a binding contract between the Public, the Commission and HDPP as written.

Respectfully Submitted:

Date: July 14th 2006

A handwritten signature in blue ink, appearing to read "Gary A. Ledford", with a large, stylized flourish extending from the end of the name.

Gary A. Ledford
Intervenor
In Pro Per